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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHRISTOPHER LEE DUNN,

Case No. BC 417928

Plaintiff,

v.

THE CITY OF BURBANK'S SEPARATE
STATEMENT IN SUPPORT OF
DEFENDANT CITY OF BURBANK'S
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, SUMMARY
ADJUDICATION

BURBANK POLICE DEPARTMENT,
CITY OF BURBANK, and DOES 1
Through 100, Inclusive,

Date: July 26, 2010
Time: 8:30 a.m.
Dept.: 31

Defendants.

CITY ATTORNEY
2010 MAY 18 PM 5:51

LA #4845-3053-4150 v1

- 1 -

BURBANK'S SEPARATE STATEMENT RE MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION

MOVING PARTY'S UNDISPUTED
MATERIAL FACT AND SUPPORTING
EVIDENCE

OPPOSING PARTIES' RESPONSE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

ISSUE 1—There is no dispute of material fact that the City is entitled to judgment on the first cause of action for Discrimination in Violation of *Government Code* § 12940(a) and (c) because plaintiff Christopher Dunn (“Dunn”) cannot produce a triable issue of material fact that the City’s reasons for his termination are false or a pretext, and because plaintiff’s claims are barred by failure to exhaust administrative remedies, immunity, or the statute of limitations.

1. Plaintiff Christopher Dunn (“Dunn”) is a former officer of the Burbank Police Department (“BPD”), who is allegedly half Japanese. [Plaintiff’s First Amended Complaint, filed July 24, 2009 (“FAC”) ¶ 1; Declaration of Kristin A. Pelletier (“Pelletier Decl.”), Ex. GG, pp. 56:21- 57:7.]

1.

2. Dunn worked Patrol at BPD from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19-23.]

2.

3. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-13.]

3.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>4. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and 42:23- 43:22.]</p>	<p>4.</p>
<p>5. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD."¹ [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]</p>	<p>5.</p>
<p>6. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Declaration of Micheal Webb ("Webb Decl."), Ex. G, p. 1.]</p>	<p>6.</p>
<p>7. JW implicated GD as a drug dealer who sells pounds of drugs. CCB Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Declaration of Charles Koffman ("Koffman Decl."), ¶¶ 3-4, Webb Decl., Ex. G, p. 1;</p>	<p>7.</p>

¹ Privileges with respect to the identities of their respective informants are held by Burbank and Culver City. Because Culver City does not wish to waive its privilege, the City will identify both of the informants by initials only.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Pelletier Decl. Ex. GG, pp. 91:11-92:1; Declaration of Victor Lewandowski ("Lewandowski Decl."), Ex. A, p. 6.]</p>	
<p>8. LA CLEAR called Dunn at 1:59 p.m. on March 11, 2007.² [Declaration of Gerardo Misqueu ("Misqueu Decl."), Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	<p>8.</p>
<p>9. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misqueu Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]</p>	<p>9.</p>
<p>10. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i>, to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in</p>	<p>10.</p>

² The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misqueu's Declaration.
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MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]</p>	
<p>11. According to Det. Koffman, he asked Dunn during their phone conversation if Dunn wanted him to not arrest GD, and Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]</p>	<p>11.</p>
<p>12. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]³</p>	<p>12.</p>
<p>13. Dunn next called his supervisor, Sgt. Jose Duran, at 2:12 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p.</p>	<p>13.</p>

³ Dunn disputes his response to Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]	
14. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]	14.
15. Meanwhile, Det. Koffman called his supervisor, Sgt. Webb, as he was concerned that Dunn's request not to proceed against GD might be illegal. [Koffman Decl., ¶¶ 5-6; Webb Decl., Ex. G, pp. 1-2.]	15.
16. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	16.
17. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	17.
18. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include	18.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the area code. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]	
19. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶ 7, Ex. H.]	19.
20. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	20.
21. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1; Webb Decl., Ex. G, p. 2.]	21.
22. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of	22.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>these calls lasted two minutes. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl.¶ 7, Ex. H.]</p>	
<p>23. Dunn's supervisor, Sgt. Duran, told Sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and could offer no explanation for why he would do so. [Lewandowski Decl., Ex. A, p. 8.]</p>	23.
<p>24. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misquez Decl., Ex. EE, p. 5; Declaration of Timothy Stehr ("Stehr Decl."), Ex. U, p. 3.]</p>	24.
<p>25. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]</p>	25.
<p>26. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during her March 11, 2007</p>	26.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>call with GD, GD told Mercado that:</p> <p>"Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e) the other agency did not care that GD was a BPD informant and was coming after her. GD also told Mercado that she knew who the subject was from Dunn's description. [Misquez Decl., Exs. X, Y, pp. 1-4.]</p>	
<p>27. Later that day, at 5:22 p.m., unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misquez Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]</p>	27.
<p>28. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was</p>	28.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
"out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]	
29. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Dec., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]	29.
30. According to Det. Koffman, JW told him that it was the first time in his 3-4 years as a customer of GD's that she had not sold to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]	30.
31. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski, Decl., Ex. A, pp. 5-6.]	31.
32. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]	32.
33. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misqueze Decl., Ex. w pp. 1, 4;	33.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]	
34. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misquez Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]	34.
35. GD would later admit to CCPD detectives that she flushed her supply of narcotics following the calls from Dunn and JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	35.
36. GD called Mercado at 5:29 p.m. on March 11, 2007. [Misquez Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	36.
37. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and	37.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
release on March 11, 2007. [Misquez Decl., Exs., X, Y, pp. 4-6.]	
38. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p. 3.]	38.
39. According to Sgt. Webb, upon being detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]	39.
40. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p.	40.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
3, Ex. H.]	
41. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]	41.
42. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn called her on Sunday, March 11 to warn her that another police agency was looking at her. [Webb Decl., ¶ 8(c), Ex. G, p. 5, 6, 7-8.]	42.
43. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn had previously told her on several occasions that her name was in a police database, so if another jurisdiction was looking at her, Dunn would be notified [Webb Decl., ¶ 8(c), Ex. G, p. 5.]	43.
44. During her March 16, 2007 interview with CCPD, GD told CCPD that she called Dunn on Tuesday or Wednesday	44.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
(March 13 of March 14) to see if he wanted to monitor a buy she was planning with a drug dealer Dunn was targeting, that Dunn told her he was too tired and to go ahead with the buy without being monitored, and that the drugs recovered at her house on March 16 were what was left from that purchase. [Webb Decl., ¶ 8(e), Ex. G, pp. 6-7.]	
45. After GD's arrest, Det. Koffman made a "ruse" phone call to Dunn and told him that CCPD was just then preparing to serve a warrant on GD. [Webb Decl., Ex. G, p. 8.]	45.
46. Then Det. Koffman notified LA CLEAR, which also notified Dunn. [Webb Decl., Ex. G, p. 8.]	46.
47. Following the LA CLEAR notifications, CCPD had GD make a recorded call to Dunn from her cell phone. Dunn answered the call and told GD he would call her back in an hour. [Webb Decl., Ex. G, p. 8, Ex. J, p. 1.]	47.
48. Seven minutes later, Dunn called back from a "Blocked Number." GD told	48.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Dunn that she had purchased drugs from the dealer Dunn was targeting and still had "quite a bit." She also said that she had gotten another call from JW and asked if everything was okay. [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	
49. Dunn told GD, "I don't know those guys, if you have, I don't know what's going on, you know what I mean. If anything is going on then you need to be careful." [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	49.
50. The following exchange also took place: Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?" GD: Uh oh, in other words, clean up, right?" Dunn: Yes. [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	50.
51. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was	51.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
investigating him. [Pelletier Decl., Ex. HH, pp. 326:22- 327:19.]	
52. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God." He also admitted that he had called to warn GD, but claimed that doing so was part of his job. [Misqueze Decl., Exs. X-Y, pp. 15-16.]	52.
53. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that, during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misqueze Decl., Exs., X, Y, pp. 16- 17.]	53.
54. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misqueze Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and Ex. 202 thereto.]	54.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>55. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr or Puglisi Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]</p>	<p>55.</p>
<p>56. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the investigation, it would not count as a discussion. [Misquez Decl., Ex. EE, p. 6; Pelletier Decl., Ex. HH, pp. 255:3-259:8.]</p>	<p>56.</p>
<p>57. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]</p>	<p>57.</p>
<p>58. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misquez Decl., Exs. X, Y, pp. 17-18.]</p>	<p>58.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>59. In her April 18, 2007 interview, Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended.</p> <p>[Misquez Decl., Ex. X, Y, pp. 17-18.]</p>	59.
<p>60. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD.</p> <p>[Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and ex. 201 thereto.]</p>	60.
<p>61. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and Ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]</p>	61.
<p>62. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]</p>	62.
<p>63. In a letter dated May 8, 2007, then-Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about</p>	63.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]	
64. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	64.
65. Sgt. Victor Lewandoski of the Los Angeles County Sheriff's Department ("LASD") conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the Los Angeles County District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	65.
66. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case against Dunn was strong and that Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	66.
67. Shortly after the District Attorney advised BPD that he had declined to	67.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
prosecute, BPD resumed its administrative investigation of Dunn. [Misquez Decl., Ex. EE, p. 8.]	
68. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	68.
69. BPD's internal affairs investigation of Dunn was completed on March 6, 2008. by Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	69.
70. On May 9, 2008, the Los Angeles County District Attorney's Office issued a	70.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>"Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]</p>	
<p>71. The Brady letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]</p>	71.
<p>72. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]</p>	72.
<p>73. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as his testimony could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20.]</p>	73.
<p>74. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)</p>	74.
<p>75. Dunn was terminated because, among</p>	75.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]</p>	
<p>76. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police Officers' Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]</p>	<p>76.</p>
<p>77. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ-KK.]</p>	<p>77.</p>
<p>78. Dunn never raised any harassment or discrimination claims during his</p>	<p>78.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	
79. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office, reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	79.
80. Dunn has no evidence that Sgt. Misquez reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11-324:8; 325:17-326:3; 329:25-332:16.]	80.
81. Both the person who conducted the investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]	81.
82. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-	82.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
69:24, and Ex. 203(B) thereto.]	
83. Dunn filed his government tort claim with the City of Burbank on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	83.
84. Dunn filed the instant action on July 16, 2009. [FAC, p. 1.]	84.
<u>ISSUE 2</u>—There is no dispute of material fact that the City is entitled to judgment on the second cause of action for Harassment in Violation of <i>Government Code</i> § 12940(a) and (j) because the subject actions are barred by the statute of limitations, because the alleged harassment was neither severe nor pervasive as a matter of law, and because plaintiff did not complain to the City about any alleged harassment.	
85. Dunn is a former officer of the Burbank Police Department (“BPD”), who is allegedly half Japanese. [FAC ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]	85.
86. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19- 23.]	86.
87. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the	87.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-13.]	
88. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and 42:23- 43:22.]	88.
89. Dunn testified at deposition that he heard racial comments from Officer Sam Anderson, Sgt. Dan Yadon, Officer Chris Racina, and Officer Claudio Losaco. [Pelletier Decl., Ex. GG, pp. 134:8- 135:5.]	89.
90. On one occasion, a month or two before April 2007, Dunn says that Officer Sam Anderson at an SRT (Special Response Team) training said, "You're going to be beat like WWII because you know we beat the Japs." [Pelletier Decl., Ex. GG, pp. 130:3-131:7.]	90.
91. Dunn also claimed that Anderson, on more than one occasion used "Jap" or "Nip" in talking about Dunn or his heritage, and used the terms "gooks", "Charlie" or "fish heads" in talking about Asians generally.	91.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
[Pelletier Decl., Ex. GG, pp. 135:1-137:5.]	
92. Anderson made these alleged comments while working with Dunn on Patrol from 2001-2003, while they were on SRT together, and while the two were friendly. [Pelletier Decl., Ex. GG, pp. 130:3-22, 135:16-136:7; Pelletier Decl. Ex. HH, pp. 184:3-185:20.]	92.
93. SRT was an extra assignment in addition to Dunn's regular job at SED or Narcotics, with occasional training sessions. [Pelletier Decl., Ex. GG, pp. 19:16-25, 25:14-19, 43:18-22.]	93.
94. Dunn did not report any of Anderson's comments to a supervisor, nor did he say anything about this to Anderson, despite being friendly with him. [Pelletier Decl., Ex. GG, pp. 135:1-4; 137:23-25, Ex. HH, pp. 184:3-185:20.]	94.
95. Dunn also identified comments made by Sgt. Dan Yadon. According to Dunn, when Yadon was being teased about almost hitting a woman in a crosswalk, Yadon said "Well its not my fault. She's Asian. She could barely see at night." and "Right	95.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Dunn. You can see right?" This was in 2005 or 2006. [Pelletier Decl., Ex. GG, pp. 157:4-21, 158:10-13.]</p>	
<p>96. Dunn also says that in discussing a Chinese restaurant Sgt., Yadon asked "What you don't like your people's food?" and when told Dunn was Japanese said "Well, its all the same." [Pelletier Decl., Ex. GG, pp. 155:20-156:7.]</p>	96.
<p>97. Dunn additionally said that, on one occasion while Dunn was in SED and before July 2006, Yadon also imitated a famous line—"Me love you long time"—of an Asian character from the movie "Full Metal Jacket" using the Asian character's accent. [Pelletier Decl., Ex. GG, pp. 159:9-24.]</p>	97.
<p>98. Dunn testified that, in 2006, Officer Chris Racina told him, "You know, there's only been three Asian... detectives that worked narcotics. One of them became a transvestite. The other one went insane." Dunn understood that he was the third one. [Pelletier Decl., Ex. GG, pp. 162:8-163:1.]</p>	98.
<p>99. Dunn identified Officer Claudio Losacco as saying in 2003 that he did not</p>	99.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>like Dunn because he had come over from the LAPD. [Pelletier Decl., Ex. A, pp. 146:19-147:17 and 149:23-150:4.]</p>	
<p>100. Dunn also claimed that Officer Losacco mimicked accents of blacks and Armenians, but not of Dunn or Asians generally. [Pelletier Decl., Ex. GG, pp. 150:5-152:6.]</p>	<p>100.</p>
<p>101. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. All of the race based comments Dunn supposedly heard occurred before he was put on administrative leave on April 18, 2007, over two years before he filed his DFEH Charge. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto, and p. 129:4-24); Stehr Decl., ¶ 4, Ex. P.]</p>	<p>101.</p>
<p>102. Dunn never made a complaint against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13.]</p>	<p>102.</p>
<p>103. Dunn testified that on one occasion he raised with Sgt. Murphy a dispute between</p>	<p>103.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Dunn and Sgt. Yadon about workload and sharing of duties among team members, without raising racial concerns. [Pelletier Decl., Ex. GG, pp. 139:10-142:10.]	
104. Dunn never raised any harassment or discrimination issues during his investigation or termination, or made any other complaint to Chief Stehr or Sgt. Misquez until he filed his DFEH claim. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	104.
105. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and Ex. 203(B) thereto.]	105.
106. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	106.
107. Dunn filed the instant action on July 16, 2009. [FAC, p. 1.]	107.

MOVING PARTY'S UNDISPUTED
MATERIAL FACT AND SUPPORTING
EVIDENCE

OPPOSING PARTIES' RESPONSE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

ISSUE 3—There is no dispute of material fact that the City is entitled to judgment on the third cause of action for Retaliation in Violation of *Government Code* § 12940(h) because plaintiff cannot produce a triable issue of material fact that the City's reasons for his termination are false or a pretext, because plaintiff's claims are barred by failure to exhaust administrative remedies, immunity, or the statute of limitations, because plaintiff did not engage in any statutorily protected conduct, and because there is no nexus between any such claimed conduct and the asserted retaliatory acts by the City.

108. Dunn is a former officer of the Burbank Police Department ("BPD"), who is allegedly half Japanese. [FAC ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]

108.

109. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19-23.]

109.

110. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. [Pelletier Decl., Ex. A,] This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-13.]

110.

111. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and

111.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
42:23- 43:22.]	
112. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD." [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]	112.
113. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Webb Decl., Ex. G, p. 1.]	113.
114. JW implicated GD as a drug dealer who sells pounds of drugs. CCPD Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Koffman Decl., ¶¶ 3-4, Webb Decl., Ex. G, p. 1; Pelletier Decl. Ex. GG, pp. 91:11-92:1; Declaration of Victor Lewandowski ("Lewandowski Decl."), Ex. A, p. 6.]	114.
115. LA CLEAR called Dunn at 1:59 p.m. on March 11, 2007. ⁵ [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman	115.

⁵ The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misquez' Declaration.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Decl., Ex. K, p. 1.]	
<p>116. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]</p>	116.
<p>117. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i>, to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]</p>	117.
<p>118. According to Det. Koffman, he asked Dunn during their phone conversation</p>	118.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>if Dunn wanted him to not arrest GD, and Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]</p>	
<p>119. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]⁶</p>	119.
<p>120. Dunn next called his supervisor, Sgt. Jose Duran, at 2:12 p.m.. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]</p>	120.
<p>121. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]</p>	121.
<p>122. Meanwhile, Det. Koffman called</p>	122.

⁶ Dunn disputes his response to Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>his supervisor, Sgt. Webb, as he was concerned that Dunn's request not to proceed against GD might be illegal. [Koffman Decl., ¶¶ 5-6; Webb Decl., Ex. G, pp. 1-2.]</p>	
<p>123. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	123.
<p>124. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misquez Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	124.
<p>125. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include the area code. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]</p>	125.
<p>126. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A,</p>	126.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶ 7, Ex. H.]	
127. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	127.
128. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex., K, p. 1; Webb Decl., Ex. G, p. 2.]	128.
129. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of these calls lasted two minutes. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl. ¶ 7, Ex. H.]	129.
130. Dunn's supervisor, Sgt. Duran, told Sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and	130.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
could offer no explanation for why he would do so. [Lewandowski Decl., Ex. A, p. 8.]	
131. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misquezt Decl., Ex. EE, p. 5; Stehr Decl., Ex. U, p. 3.]	131.
132. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misquezt Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]	132.
133. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD told Mercado that call with GD, GD told Mercado that: "Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e)	133.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>the other agency did not care that GD was a BPD informant and was coming after her. GD also told Mercado that she knew who the subject was from Dunn's description. [Misquez Decl., Exs. X, Y, pp. 1-4.]</p>	
<p>134. Later that day, at 5:22 p.m., completely unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misquez Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]</p>	134.
<p>135. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was "out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]</p>	135.
<p>136. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Dec., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]</p>	136.
<p>137. According to Det. Koffman, JW told him that it was the first time in his 3-4</p>	137.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>years as a customer of GD's that she had not sold to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]</p>	
<p>138. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski, Decl., Ex. A, pp. 5-6.]</p>	138.
<p>139. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]</p>	139.
<p>140. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misqueze Decl., Ex. w pp. 1, 4; Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	140.
<p>141. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misqueze Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]</p>	141.
<p>142. GD would later admit to CCPD detectives that she flushed her supply of</p>	142.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
narcotics following the calls from Dunn and JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	
143. GD called Mercado at 5:29 p.m.. on March 11, 2007. [Misquezt Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	143.
144. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and release on March 11, 2007. [Misquezt Decl., Exs., X, Y, pp. 4-6.]	144.
145. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p. 3.]	145.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
146. According to Sgt. Webb, upon being detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]	146.
147. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p. 3, Ex. H.]	147.
148. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]	148.
149. During her March 16, 2007	149.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>interview with CCPD , GD told CCPD that Dunn called her on Sunday, March 11 to warn her that another police agency was looking at her. [Webb Decl., ¶ 8(c), Ex. G, p. 5, 6, 7-8.]</p>	
<p>150. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn had previously told her on several occasions that her name was in a police database, so if another jurisdiction was looking at her, Dunn would be notified [Webb Decl., ¶ 8(c), Ex. G, p. 5.]</p>	150.
<p>151. During her March 16, 2007 interview with CCPD , GD told CCPD that she called Dunn on Tuesday or Wednesday (March 13 of March 14) to see if he wanted to monitor a buy she was planning with a drug dealer Dunn was targeting, that Dunn told her he was too tired and to go ahead with the buy without being monitored, and that the drugs recovered at her house on March 16 were what was left from that purchase. [Webb Decl., ¶ 8(e), Ex. G, pp. 6-7.]</p>	151.
<p>152. After GD's arrest, Det. Koffman made a "ruse" phone call to Dunn and told</p>	152.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
him that CCPD was just then preparing to serve a warrant on GD. [Webb Decl., Ex. G, p. 8.]	
153. Then Det. Koffman notified LA CLEAR, which also notified Dunn. [Webb Decl., Ex. G, p. 8.]	153.
154. Following the LA CLEAR notifications, CCPD had GD make a recorded call to Dunn from her cell phone. Dunn answered the call and told GD he would call her back in an hour. [Webb Decl., Ex. G, p. 8, Ex. J, p. 1.]	154.
155. Seven minutes later, Dunn called back from a "Blocked Number." GD told Dunn that she had purchased drugs from the dealer Dunn was targeting and still had "quite a bit." She also said that she had gotten another call from JW, and asked if everything was okay. . [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2).]	155.
156. Dunn told GD, "I don't know those guys, if you have, I don't know what's going on, you know what I mean. If anything is going on then you need to be careful." [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	156.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>157. The following exchange also took place:</p> <p>Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?"</p> <p>GD: Uh oh, in other words, clean up, right?"</p> <p>Dunn: Yes.</p> <p>[Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	157.
<p>158. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was investigating him. [Pelletier Decl., Ex. HH, pp. 326:22-327:19.]</p>	158.
<p>159. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God," and to admit that he had called to warn GD, but claimed that doing so was part of his job. [Misquez Decl., Exs. X-Y, pp. 15-16.]</p>	159.
160. In a recorded interview with BPD on	160.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>April 18, 2007, Mercado told BPD that, during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misquez Decl., Exs., X, Y, pp. 16-17.]</p>	
<p>161. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misquez Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and Ex. 202 thereto.]</p>	<p>161.</p>
<p>162. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr or Puglisi Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]</p>	<p>162.</p>
<p>163. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the</p>	<p>163.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
investigation, it would not count as a discussion. [Misquez Decl., Ex. EE, p. 6; Pelletier Decl., Ex. HH, pp. 255:3-259:8.]	
164. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]	164.
165. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misquez Decl., Exs. X, Y, pp. 17-18.]	165.
166. In her April 18, 2007 interview, Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended. [Misquez Decl., Ex. X, Y, pp. 17-18.]	166.
167. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and Ex. 201 thereto.]	167.
168. April 18, 2007 was the last day Dunn	168.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]	
169. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]	169.
170. In a letter dated May 8, 2007, then- Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]	170.
171. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	171.
172. Sgt. Victor Lewandoski of the Los Angeles County Sheriff's Department conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed	172.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>a crime, and presented the case to the Los Angeles County District Attorney's Office for filing consideration on July 6, 2007 .</p> <p>[Lewandowski Decl., Ex. A, ¶¶ 2-3.]</p>	
<p>173. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case against Dunn was strong and Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants.</p> <p>[Baker Decl., ¶¶ 2-3.]</p>	173.
<p>174. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative investigation of Dunn. [Misquez Decl., Ex. EE, p. 8.]</p>	174.
<p>175. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]</p>	175.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>176. BPD's internal affairs investigation of Dunn was completed on March 6, 2008. by Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]</p>	<p>176.</p>
<p>177. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]</p>	<p>177.</p>
<p>178. The Brady letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]</p>	<p>178.</p>
<p>179. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified</p>	<p>179.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]	
180. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as it could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20.]	180.
181. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)]	181.
182. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12- 19.]	182.
183. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of	183.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Understanding between the City of Burbank and the Burbank Police Officers' Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
184. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ-KK.]	184.
185. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	185.
186. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office, reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	186.
187. Dunn has no evidence that Sgt. Misquez reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11-	187.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
324:8; 325:17-326:3; 329:25-332:16.]	
188. Dunn never made any complaints against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13.]	188.
189. Both the person who conducted the investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]	189.
190. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and Ex. 203(B) thereto.]	190.
191. Dunn filed his government tort claim with the City of Burbank on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	191.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
192. Dunn filed the instant action on July 16, 2009. [FAC, p. 1.]	192.
ISSUE 4—There is no dispute of material fact that the City is entitled to judgment on the fourth cause of action for Failure to Take Steps to Prevent Discrimination and Harassment in Violation of <i>Government Code</i> § 12940(j)(1), and (k) because plaintiff cannot produce a triable issue of fact to support a claim for discrimination, harassment, or retaliation.	
193. Dunn is a former officer of the Burbank Police Department ("BPD"), who is allegedly half Japanese. [FAC, ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]	193.
194. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19- 23.]	194.
195. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8- 13.]	195.
196. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and	196.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
42:23- 43:22.]	
197. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD." [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]	197.
198. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Webb Decl., Ex. G, p. 1.]	198.
199. JW implicated GD as a drug dealer who sells pounds of drugs. Culver City Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Koffman Decl., ¶¶ 3-4, Webb Decl., Ex. G, p. 1; Pelletier Decl. Ex. GG, pp. 91:11-92:1; Lewandowski Decl., Ex. A, p. 6.]	199.
200. LA CLEAR called Dunn at 1:59 p.m. ⁸ [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	200.

⁸ The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misquez' Declaration.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>201. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]</p>	<p>201.</p>
<p>202. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i>, to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]</p>	<p>202.</p>
<p>203. According to Det. Koffman, he asked Dunn during their phone conversation if Dunn wanted him to not arrest GD, and</p>	<p>203.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]</p>	
<p>204. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]⁹</p>	<p>204.</p>
<p>205. Dunn next called his supervisor Sgt. Jose Duran at 2:12 p.m.. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]</p>	<p>205.</p>
<p>206. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]</p>	<p>206.</p>
<p>207. Meanwhile, Det. Koffman called his supervisor, Sgt. Webb, as he was</p>	<p>207.</p>

⁹ Dunn disputes this portion of his conversation with Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>concerned that Dunn's request not to proceed against GD might be illegal.</p> <p>[Koffman Decl., ¶¶ 5-6; Webb Decl., Ex. G, pp. 1-2.]</p>	
<p>208. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	208.
<p>209. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misquez Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	209.
<p>210. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include the area code. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]</p>	210.
<p>211. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶</p>	211.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
7, Ex. H.]	
212. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	212.
213. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex., K, p. 1; Webb Decl., Ex. G, p. 2.]	213.
214. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of these calls lasted two minutes. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl., 7, Ex. H.]	214.
215. Dunn's supervisor, Sgt. Duran, told sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and could offer no explanation for why he would	215.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
do so. [Lewandowski Decl., Ex. A, p. 8).]	
216. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misqueze Decl., Ex. EE, p. 5; Stehr Decl., Ex. U, p. 3.]	216.
217. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misqueze Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]	217.
218. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD told Mercado that call with GD, GD told Mercado that: "Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e) the other agency did not care that GD was a	218.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>BPD informant and was coming after her.</p> <p>GD also told Mercado that she knew who the subject was from Dunn's description.</p> <p>[Misqueze Decl., Exs. X, Y, pp. 1-4.]</p>	
<p>219. Later that day, at 5:22 p.m., completely unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misqueze Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]</p>	219.
<p>220. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was "out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]</p>	220.
<p>221. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Dec., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]</p>	221.
<p>222. According to Det. Koffman, JW told him that it was the first time in his 3-4 years as a customer of GD's that she had not sold</p>	222.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]	
223. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]	223.
224. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]	224.
225. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misquez Decl., Ex. w pp. 1, 4; Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]	225.
226. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misquez Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]	226.
227. GD would later admit to CCPD detectives that she flushed her supply of narcotics following the calls from Dunn and	227.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	
228. GD called Mercado at 5:29 p.m.. on March 11, 2007. [Misquez Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	228.
229. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and release on March 11, 2007. [Misquez Decl., Exs., X, Y, pp. 4-6.]	229.
230. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p., 3.]	230.
231. According to Sgt. Webb, upon being	231.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]	
232. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p. 3, Ex. H.]	232.
233. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]	233.
234. During her March 16, 2007 interview with CCPD, GD told CCPD that	234.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Dunn called her on Sunday, March 11 to warn her that another police agency was looking at her. [Webb Decl., ¶ 8(c), Ex. G, p. 5, 6, 7-8.]</p>	
<p>235. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn had previously told her on several occasions that her name was in a police database, so if another jurisdiction was looking at her, Dunn would be notified [Webb Decl., ¶ 8(c), Ex. G, p. 5.]</p>	235.
<p>236. During her March 16, 2007 interview with CCPD, GD told CCPD that she called Dunn on Tuesday or Wednesday (March 13 of March 14) to see if he wanted to monitor a buy she was planning with a drug dealer Dunn was targeting, that Dunn told her he was too tired and to go ahead with the buy without being monitored, and that the drugs recovered at her house on March 16 were what was left from that purchase. [Webb Decl., ¶ 8(e), Ex. G, pp. 6-7.]</p>	236.
<p>237. After GD's arrest, Det. Koffman made a "ruse" phone call to Dunn and told him that CCPD was just then preparing to</p>	237.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
serve a warrant on GD. [Webb Decl., Ex. G, p. 8.]	
238. Then Det. Koffman notified LA CLEAR, which also notified Dunn. [Webb Decl., Ex. G, p. 8.]	238.
239. Following the LA CLEAR notifications, CCPD had GD make a recorded call to Dunn from her cell phone. Dunn answered the call and told GD he would call her back in an hour. [Webb Decl., Ex. G, p. 8, Ex. J, p. 1.]	239.
240. Seven minutes later, Dunn called back from a "Blocked Number." GD told Dunn that she had purchased drugs from the dealer Dunn was targeting and still had "quite a bit." She also said that she had gotten another call from JW, and asked if everything was okay. [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	240.
241. Dunn told GD, "I don't know those guys, if you have, I don't know what's going on, you know what I mean. If anything is going on then you need to be careful." [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	241.
242. The following exchange also took	242.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>place:</p> <p>Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?"</p> <p>GD: Uh oh, in other words, clean up, right?"</p> <p>Dunn: Yes.</p> <p>[Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	
<p>243. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was investigating him. [Pelletier Decl., Ex. HH, pp. 326:22-327:19.]</p>	<p>243.</p>
<p>244. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God," and to admit that he had called to warn GD, but claimed that doing so was part of his job. [Misqueza Decl., Exs. X-Y, pp. 15-16.]</p>	<p>244.</p>
<p>245. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that,</p>	<p>245.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misqueze Decl., Exs., X, Y, pp. 16-17.]</p>	
<p>246. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3-4, Ex. O; Misqueze Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and ex. 202 thereto.]</p>	<p>246.</p>
<p>247. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr or Puglisi Decl., ¶ 3; Misqueze Decl., Ex. EE, p. 6.]</p>	<p>247.</p>
<p>248. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the investigation, it would not count as a</p>	<p>248.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
discussion. [Misquez Decl., Ex. EE, p. 6; Pelletier Decl., Ex. HH, pp. 255:3-259:8.]	
249. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]	249.
250. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misquez Decl., Exs. X, Y, pp. 17-18.]	250.
251. In her April 18, 2007 interview, Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended. [Misquez Decl., Ex. X, Y, pp. 17-18.]	251.
252. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and ex. 201 thereto.]	252.
253. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a	253.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]	
254. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]	254.
255. In a letter dated May 8, 2007, then- Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]	255.
256. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	256.
257. Sgt. Victor Lewandoski of the Los Angeles County Sheriff's Department conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the Los	257.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Angeles County District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]</p>	
<p>258. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case was strong and Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]</p>	258.
<p>259. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative investigation of Dunn. [Misquez Decl., Ex. EE, p. 8.]</p>	259.
<p>260. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]</p>	260.
<p>261. BPD's internal affairs investigation of Dunn was completed on March 6, 2008. by</p>	261.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]</p>	
<p>262. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]</p>	262.
<p>263. The letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]</p>	263.
<p>264. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD.</p>	264.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
[Stehr Decl., ¶ 7, Ex. T.]	
265. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as it could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20;]	265.
266. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)]	266.
267. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]	267.
268. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police Officers'	268.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
269. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ- KK.]	269.
270. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	270.
271. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	271.
272. Dunn has no evidence that Sgt. Misquez reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11- 324:8; 325:17-326:3; 329:25-332:16.]	272.
273. Both the person who conducted the	273.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]</p>	
<p>274. Dunn testified at deposition that he heard racial comments from Officer Sam Anderson, Sgt. Dan Yadon, Officer Chris Racina, and Officer Claudio Losaco. [Pelletier Decl., Ex. GG, pp. 134:8- 135:5.]</p>	<p>274.</p>
<p>275. On one occasion, a month or two before April 2007, Dunn says that Officer Sam Anderson at an SRT (Special Response Team) training said, "You're going to be beat like WWII because you know we beat the Japs." [Pelletier Decl., Ex. GG, pp. 130:3-131:7.]</p>	<p>275.</p>
<p>276. Dunn also claimed that Anderson, on more than one occasion used "Jap" or "Nip" in talking about Dunn or his heritage, and used the terms "gooks", "Charlie" or "fish heads" in talking about Asians generally. [Pelletier Decl., Ex. GG, pp. 135:1-137:5.]</p>	<p>276.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>277. Anderson made these alleged comments while working with Dunn on patrol from 2001-2003, while they were on SRT together, and while the two were friendly. [Pelletier Decl., Ex. GG, pp. 130:3-22, 135:16-136:7; Pelletier Decl. Ex. HH, pp. 184:3-185:20.]</p>	<p>277.</p>
<p>278. SRT was an extra assignment in addition to Dunn's regular job at SED or Narcotics, with occasional training sessions [Pelletier Decl., Ex. GG, pp. 19:16-25, 25:14-19, 43:18-22.]</p>	<p>278.</p>
<p>279. Dunn did not report any of Anderson's comments to a supervisor, nor did he say anything about this to Anderson, despite being friendly with him. [Pelletier Decl., Ex. GG, pp. 135:1-4; 137:23-25, Ex. HH, pp. 184:3-185:20.]</p>	<p>279.</p>
<p>280. Dunn also identified two comments made by Sgt. Dan Yadon. According to Dunn, when Yadon was being teased about almost hitting a woman in a crosswalk, Yadon said "Well its not my fault. She's Asian. She could barely see at night." and "Right Dunn. You can see right?" This was</p>	<p>280.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
in 2005 or 2006. [Pelletier Decl., Ex. GG, pp. 157:4-21, 158:10-13).]	
281. Dunn also says that in discussing a Chinese restaurant Sgt., Yadon asked "What you don't like your people's food?" and when told Dunn was Japanese said "Well, its all the same." [Pelletier Decl., Ex. GG, pp. 155:20-156:7.]	281.
282. Dunn additionally said that, on one occasion while Dunn was in SED and before July 2006, Yadon also imitated a famous line—"Me love you long time"—of an Asian character from the movie "Full Metal Jacket" using the Asian character's accent. [Pelletier Decl., Ex. GG, pp. 159:9-24.]	282.
283. Dunn testified that, in 2006, Officer Chris Racina told him, "You know, there's only been three Asian... detectives that worked narcotics. One of them became a transvestite. The other one went insane." Dunn understood that he was the third one. [Pelletier Decl., Ex. GG, pp. 162:8-163:1.]	283.
284. Dunn identified Officer Claudio Losacco as saying in 2003 that he did not like Dunn because he had come over from	284.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the LAPD. [Pelletier Decl., Ex. GG, pp. 146:19-147:17 and 149:23-150:4]	
285. Dunn also claimed that Officer Losacco mimicked accents of blacks and Armenians, but not of Dunn or Asians generally. [Pelletier Decl., Ex. GG, pp. 150:5-152:6.]	285.
286. All of the race based comments Dunn supposedly heard occurred before he was put on administrative leave on April 17, 2007, over two years before he filed his DFEH Charge. [Pelletier Decl., Ex. GG, p. 129:4-24).]	286.
287. Dunn never made any complaints against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13).]	287.
288. Dunn says that on one occasion he raised with Sgt. Murphy a dispute between Dunn and Sgt. Yadon about workload and sharing of duties among team members, without raising racial concerns. [Pelletier Decl., Ex. GG, pp. 139:10-142:10.]	288.
289. Dunn never raised any harassment or	289.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>discrimination issues during his investigation or termination, or made any other complaint to Stehr or Misquez until he filed his DFEH claim. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]</p>	
<p>290. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B) thereto.]</p>	<p>290.</p>
<p>291. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]</p>	<p>291.</p>
<p>292. Dunn filed this action on July 16, 2009. [FAC, p. 1.]</p>	<p>292.</p>
<p>ISSUE 5—There is no dispute of material fact that the City is entitled to judgment on the sixth cause of action for Violations of the Public Safety Officers Procedural Bill of Rights Act because plaintiff cannot present a triable issue of material fact showing a violation of any of his rights under that Act, or produce a timely government claim asserting these alleged facts or legal theory.</p>	
<p>293. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)</p>	<p>293.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>294. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]</p>	<p>294.</p>
<p>295. Dunn never raised any harassment or discrimination issues during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]</p>	<p>295.</p>
<p>296. At his deposition, Dunn admitted that he has no information to suggest that any of the outside agencies who reviewed the case, CCPD, LASD, or the District Attorney reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]</p>	<p>296.</p>
<p>297. Other than arguing that BPD's investigation was not as thorough as he would like, Dunn has no evidence that BPD's investigation or conclusion were racially biased. [Pelletier Decl., Ex. HH, pp.</p>	<p>297.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
311:11-324:8; 325:17-326:3; 329:25- 332:16.]	
298. Neither the person who conducted the investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) had any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]	298.
299. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4- 69:24, and ex. 203(B) thereto.]	299.
300. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	300.
301. Dunn filed this action on July 16, 2009. [FAC, p. 1.]	301.
302. Neither Dunn's tort claim nor his DFEH claim make any mention of any claim under POBRA. Nor do they allege any	302.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>facts that constitute a violation of POBRA. FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B) thereto and Ex. GG, pp. 70:11- 71:8.]</p>	
<p>303. Dunn's written discovery responses state that he has "no information or belief" of any "other practices" in violation of POBRA besides retaliation. [Pelletier Decl., Ex. LL (Spec. Rog. Resp. No. 106).]</p>	<p>303.</p>
<p><u>ISSUE 6</u>—The City is entitled to summary adjudication in its favor on one or more causes of action pursuant to its eighteenth affirmative defense of the statute of limitations.</p>	
<p>304. On April 18, 2007, after interviewing Mercado and receiving independent corroboration that Dunn had warned GD of CCPD's investigation, Dunn was placed on paid administrative leave while the investigation continued. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9-60:6 and ex. 201 thereto.]</p>	<p>304.</p>
<p>305. Thus, April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]</p>	<p>305.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
306. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)]	306.
307. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B) thereto.]	307.
308. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	308.
309. Dunn filed this action on July 16, 2009. [FAC, p. 1.]	309.
ISSUE 7—The City is entitled to summary adjudication in its favor on one or more causes of action pursuant to its eleventh affirmative defense of failure to exhaust administrative remedies.	
310. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)]	310.
311. He thereafter commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police	311.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Officers' Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
312. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-6, Exs. JJ-KK.]	312.
313.	313.
ISSUE 8—The City is entitled to summary adjudication in its favor on one or more causes of action actions pursuant to its nineteenth affirmative defense of privileges and immunities.	
314. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misquez Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and ex. 202 thereto.]	314.
315. Dunn was given a direct order not to discuss the investigation with anyone other than his union or legal representatives. [Stehr or Puglisi Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]	315.
316. On April 18, 2007, after interviewing	316.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Mercado and receiving independent corroboration that Dunn had warned GD of CCPD's investigation, Dunn was placed on paid administrative leave while the investigation continued. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9-60:6 and ex. 201 thereto.]</p>	
<p>317. Thus, April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]</p>	<p>317.</p>
<p>318. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]</p>	<p>318.</p>
<p>319. Therefore, in a letter dated May 8, 2007, then-Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]</p>	<p>319.</p>
<p>320. BPD's internal investigation of Dunn</p>	<p>320.</p>


MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	
321. Sgt. Victor Lewandoski of the LASD conducted the criminal investigation, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	321.
322. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case was strong and Dunn's conduct was an egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	322.
323. Shortly thereafter, BPD resumed its administrative investigation of Dunn. [Misquez Decl., Ex. EE, p. 8).]	323.
324. Multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel.	324.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	
325. The internal affairs investigation was completed on March 6, 2008, with Sgt. Gerardo Misquez concluding that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	325.
326. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]	326.
327. The letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]	327.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>328. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]</p>	<p>328.</p>
<p>329. This would make Dunn ineffective as an investigating officer and prosecution witness, as his testimony could be readily impeached. [Stehr Decl., ¶ 7 and Ex. U, pp. 18-20; Baker Decl., ¶ 4.]</p>	<p>329.</p>
<p>330. Dunn was terminated from the BPD on July 17, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U.)]</p>	<p>330.</p>
<p>331. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]</p>	<p>331.</p>

1 Dated: May 12, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier

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**THE CITY OF BURBANK'S SEPARATE STATEMENT IN SUPPORT OF
DEFENDANT CITY OF BURBANK'S MOTION FOR SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

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Executed on May 12, 2010, at Los Angeles, California.

1000 2000 3000 4000 5000 6000 7000 8000 9000 10000 11000 12000 13000 14000 15000 16000 17000 18000 19000 20000 21000 22000 23000 24000 25000 26000 27000 28000 29000 30000 31000 32000 33000 34000 35000 36000 37000 38000 39000 40000 41000 42000 43000 44000 45000 46000 47000 48000 49000 50000 51000 52000 53000 54000 55000 56000 57000 58000 59000 60000 61000 62000 63000 64000 65000 66000 67000 68000 69000 70000 71000 72000 73000 74000 75000 76000 77000 78000 79000 80000 81000 82000 83000 84000 85000 86000 87000 88000 89000 90000 91000 92000 93000 94000 95000 96000 97000 98000 99000 100000